

STATE OF MICHIGAN
COURT OF APPEALS

JILL M. MORSE,

Plaintiff-Appellee,

v

PATRICK M. MORSE,

Defendant-Appellant.

UNPUBLISHED
December 7, 2006

No. 262619
Bay Circuit Court
LC No. 03-007201-DM

Before: Cooper, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from a final judgment of divorce. Specifically, defendant appeals the trial court's award to plaintiff of \$180,000 as reimbursement for her contributions toward defendant's medical degree. Defendant also appeals the six percent annual interest rate assessed on this award. We reverse and remand.

Defendant first argues that the trial court incorrectly applied the law when it permitted his time spent in residency to be included in the amount awarded to plaintiff for her contributions to defendant's advanced degree. We agree. We review a trial court's decision de novo for clear error of law and the erroneous application of law to facts. *Sparks v Sparks*, 440 Mich 141, 145-152; 485 NW2d 893 (1992). On review, we are required to accept the trial court's factual findings unless those findings are clearly erroneous. *Beason v Beason*, 435 Mich 791, 803; 460 NW2d 207 (1990).

"[T]he attainment of an advanced degree is a prolonged undertaking involving considerable expenditure of time, effort, and money, as well as other sacrifices," and "[w]here such an undertaking is pursued . . . , both spouses expect to be compensated for their respective sacrifices, efforts, and contributions by eventually sharing in the fruits of the degree." *Postema v Postema*, 189 Mich App 89, 95; 471 NW2d 912 (1991). However, if the parties divorce, "the degree holder will always have the degree to show for the efforts, [but] the nonstudent spouse is left with nothing." *Id.* at 95. Thus, "fairness dictates that a spouse who did not earn an advanced degree be compensated whenever the advanced degree is the end product of a *concerted family effort* involving mutual sacrifice and effort by both spouses." *Id.* at 94. An equitable claim arises because the degree is "the end product of the mutual sacrifice, effort, and contribution of both parties as part of a larger, long-range plan intended to benefit the family as a whole." *Id.* at 95.

In the present case, defendant argues that the trial court improperly awarded plaintiff compensation for support of plaintiff during both the period in which he was enrolled in medical school and his period of residency after graduation. Defendant contends that the trial court could properly only consider plaintiff's support during the period of his enrollment in medical school. We agree.

In *Postema* the Court stated that the focus of an advanced degree award "is not to reimburse the nonstudent spouse for 'loss of expectations' over what the degree might potentially have produced," but rather "to reimburse that spouse for unrewarded sacrifices, efforts, and contributions toward *attainment of the degree* on the ground that it would be equitable to do so *in view of the fact* that that spouse will not be sharing in the fruits of the *degree*." *Id.* at 104 (emphasis added). In the present case, the parties determined that the best course of action after defendant attained his degree was for plaintiff to remain at home and care for the parties' children while defendant obtained his standing to practice medicine as an orthopedic surgeon and developed his practice. Although this decision likely affected plaintiff's earning potential and professional development, these efforts are not compensable as contributions towards defendant's attainment of his medical degree. Hence, the trial court erred when it awarded plaintiff an amount of restitution that included both her efforts to aid the concerted family effort to obtain the degree and to assist defendant in developing the full potential of the degree he had attained. Therefore, we vacate the award and remand for recalculation of the amount of restitution based on the contributions made by plaintiff during the period defendant actually attended medical school.

Because of our resolution of this issue, we need not address defendant's argument that the trial court clearly erred when it determined that plaintiff was entitled to \$180,000 for her contributions toward defendant's attainment of his medical degree. However, because the issue will likely arise again on remand, we elect to address defendant's contention that the trial court erred when it adopted a six percent annual interest rate on the award.

The setting of interest in a property division of a divorce decree is within the equitable powers of the trial court. *Duby v Duby*, 163 Mich App 396, 399; 413 NW2d 807 (1987). Because interest on such awards is granted solely pursuant to the equitable powers of the court, any factor used "must be one that is fair, equitable, and just under the circumstances of the case." *Thomas v Thomas*, 176 Mich App 90, 92; 439 NW2d 270 (1989). The interest rate must "operate[] neither as a windfall to the recipient nor as a punitive measure against the payor." *Id.* Ultimately, an award of interest in equity lies in the sound discretion of the trial court. *Reigle v Reigle*, 189 Mich App 386, 393-394; 474 NW2d 297 (1991).

MCL 438.31 fixes the lawful rate of interest between individuals at five percent unless otherwise agreed to in writing. However, contrary to defendant's assertion, neither the relevant case law nor the language of the statute requires a five percent interest rate. Defendant argues that the Supreme Court in *Clifford v Clifford*, 434 Mich 480; 453 NW2d 675 (1990) held specifically that the maximum interest rate on a consent judgment is seven percent. Thus, defendant argues, the regular usury rate of five percent must apply to non-consent agreements such as in the case at hand. However, *Clifford* only set a maximum rate on consent agreements and made no mention of interest rate limitations on non-consent agreements. Further, *Thomas* did not make five percent the maximum allowable rate, but rather characterized it as the minimum rate. *Thomas*, *supra* at 93. Indeed, in *Lawrence v Lawrence*, 150 Mich App 29; 388

NW2d 291 (1986), the Court affirmed an award of interest as high as 12 percent on amounts overdue from a divorce decree, stating it was properly based on the court's equitable powers. The Supreme Court's holdings in *Clifford* and the holding in *Lawrence* demonstrate that while there is a seven percent ceiling for interest rates on consent judgments, there is no ceiling for property awards issued after a contested divorce proceeding.

Furthermore, as plaintiff points out, "[t]he purpose of usury statutes is 'to protect borrowers from the outrageous demands often made and required by lenders.'" *Duby, supra* at 399 (citation omitted). However, "the protection of 'needy borrowers' or the penalization of 'unconscionable moneylenders' . . . is simply not relevant when the transaction at hand is a trial court's order regarding a property settlement in a divorce judgment." *Id.* Accordingly, the trial court is bound only by equitable constraints in its determination of the appropriate interest rate.

Reversed and remanded for recalculation of the amount of restitution owed to plaintiff for her contribution to defendant's attainment of his medical degree. We do not retain jurisdiction.

/s/ Jessica R. Cooper

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski